IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 301 OF 2004.
IN
SUIT NO. 3406 OF 1993

Keshav K.Gohil & others. ... Appellants.
Versus.
Dinshaw Sorabji Ghandy. ... Respondent.

Shri Bharat Vaishnawa for the Appellants.

Shri D.R.Zaiwala, Senior Advocate i/by M/s.Wadia Ghandy & Co.for the Respondent.

AND

APPEAL NO. 382 OF 2004
IN
SUIT NO. 1900 OF 2002

Keshav K.Gohil. ... Appellant.
Versus.
Dinshaw Sorabji Ghandy and others. ... Respondents.

Shri Bharat Vaishnawa for the Appellant.

Shri D.R.Zaiwala, Senior Advocate i/by M/s.Waida Ghandy & Co. for the Respondents.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : 19th June, 2006.

P.C.:

1. We have heard the learned Counsel appearing for the Appellants and the learned Senior Counsel appearing for the Respondents.

2. On 14th July 2005 the parties filed consent

terms. The consent terms were taken on record on the same day by this Court. This Court noted in the order that the Appellants were present in the Court and the contents of the consent terms were explained by their Advocate on record to them. The undertakings contained in the consent terms dated 14th July 2005 were accepted by this Court on the same day. The Appeals were adjourned for directions to a further date.

3. Clauses 1 to 4 of the consent terms dated 14th July 2005 read thus:

> 1. The Appellants in Appeal No.301 of 2004 have proposed that they will pay to the Respondent (Mr.D.S.Ghandy) 1/3rd of the value of the suit premises, on valuation of the same. The Appellants agree and undertake that they will deposit within six weeks from today, a sum of Rs.15 lakhs in this Hon'ble Court which amount the Respondent (Mr.D.S.Ghandy) will be allowed to withdraw unconditionally and which amount shall not be refundable or repayable by the Respondent in any circumstances whatsoever.
>
> 2. On such deposit being made by the Appellants, Mr.Roshan Namavati, Architect is appointed as valuer of the suit premises and will make his valuation report in respect of the suit

premises within two weeks from such deposit. The Appellants undertake to bear and pay the costs of Mr.Namavati for preparation of the valuation report.

3. The Appellants undertake to pay to the Respondent (Mr.D.S.Ghandy) the balance amount payable to him in the event of his 1/3rd share of the value of the suit premises exceeding Rs.15 lakhs as per the valuation report of Mr.Namavati. The said amount shall be paid by the Appellants to the Respondent within two weeks of Mr.Namavati preparing his valuation report. The Appellants agree and declare that even if on such valuation of the suit premises, the amount payable to the Respondent is less than Rs.15 lakhs, the Respondent will not be required to repay or refund any part of the said sum of Rs.15 lakhs.

4. In the event of the Appellants failing to deposit the said sum of Rs.15 lakhs on or before the due date and/or not paying the balance amount payable to the Respondent on valuation as per clauses 1 and 3 above, the consent terms dated 14th July 2005 signed by all the parties hereto and marked Y for identification will become operative and the

above Appeals shall stand disposed of in terms of the said consent terms without any further order of this Hon'ble Court.

Now Shri Roshan Namavati who was appointed under the consent terms has submitted a valuation report. The Appellants by filing an affidavit have raised various objections to the said valuation report.

4. The learned Counsel for the Appellants submitted that the valuer has not read the ready reckoner properly. He submitted that the property in question falls in zone 6/55 but the valuer has proceeded on an erroneous assumption that the property falls in zone 6/52. The learned Counsel for the Appellants, therefore, submitted that the valuer may be directed to make a fresh valuation.

5. The learned Senior Counsel appearing for the Respondent submitted that in view of the stipulations in the consent terms, the Appellants are not entitled to raise any objection to the valuation report. He also invited our attention to the order dated 27th April 2006 passed by the earlier Bench.

6. We have considered the submissions. It is not in dispute that the consent terms dated 14th July 2005 have been duly signed by both the parties and their

Advocates and the parties have accepted the contents of the consent terms to be correct. Under clause 3 of the consent terms, necessary amount will have to be deposited by the Appellants in accordance with the valuation report. Clause 4 of the consent terms provides for consequences of failure of the Appellants to deposit the amount as per the valuation report. The said clause provides that if the Appellants fail to pay the necessary amount as per the valuation report, it is agreed between the parties that the consent terms which are annexed to the consent terms dated 14th July 2005 will become operative. In view of the stipulations in the consent terms, the Appellants will have to make payment on the basis of the report of the valuer. If the Appellants fail to make payment, consequences prescribed in the consent terms will follow. Therefore, the objections raised to the valuation report by the Appellants cannot be considered by this Court.

7. It will also be necessary to refer to the order dated 27th April 2006, which reads thus:

> . "The report given by the Architect is received. Receiver to release the fees of the concerned Architect and valuer. Mr.Vaishnawa appearing for the appellants informs the Court that the appellants will arrange amount of difference failing which concerned premises

will have to be auctioned. On his request matter to stand over to 2nd May 2006 at 3 O'clock."

8. The Appeals were kept pending as the report of the Valuer was awaited and therefore, the Appeals were kept from time to time for directions. Earlier orders and in particular the orders dated 14th July 2005 and 12th September 2005 make it very clear that the parties agreed that the Appeals be disposed of in terms of the consent terms. We accordingly direct that the Appeals are disposed of in terms of the consent terms marked "Y" for identification, which are taken on record on 14th July 2005. Liberty to apply in case of any difficulty.

CHIEF JUSTICE

ABHAY S.OKA, J.